

Docket Entry 196

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Criminal No. 1:03-cr-01492-JMF

v.

Henry Lopez,
Defendant.

(Dkt 195) The motion for
termination of supervised
release is deemed
voluntarily WITHDRAWN.
Motions 195 and 196 are
terminated. SO ORDERED
JFM/BS
12-9-22

Motion to Voluntarily Dismiss Pursuant to Rule 41(a)(2)

COMES NOW, Henry Lopez, defendant, ("Lopez" herein) to respectfully request this Court grant his Motion to Voluntarily Dismiss Pursuant to Rule 41(a)(2) In support thereof Lopez puts forth the following:

Relevant Facts:

On October 17th, 2022, Lopez filed a PRO- SE MOTION TO TERMINATE SUPERVISED RELEASE PURSUANT TO 18 U.S.C. SECTION 3583(e)(1) was served upon the U.S. Attorney for the Southern District of New York and the United States Probation Office for the Southern District of New York.

In the instant petition Lopez seeks to voluntarily dismiss this action by filing a Notice of Voluntary Dismissal with this Court. (Notice of Voluntary Dismissal Without Prejudice Pursuant to Rule 41(a)(1)(i) (" Notice of Voluntary Dismissal").

Lopez contends that under his Notice of Voluntary Dismissal, pursuant to Rule 41(a)(1)(i), he would like to dismiss his pending petition without prejudice on all causes of action in his request.

In addition, his Notice of Voluntary Dismissal declared that [n]o additional notice or approval is required for this voluntary dismissal without prejudice, pursuant to Rule 23(e).

Relief Sought:

Lopez's Voluntary Dismissal Without Prejudice Pursuant to Rule 41(a)(1)(i) should be granted as a result of lack of representations by counsel; new developments; and all the circumstances stated herein.

However, he serves the right to reassert any or all causes of action at a later date. Lopez provided to counsel for the government, on the morning of November 23rd, 2022, an advance notice and a copy of the brief in support of voluntarily dismissal of the motion. With the right to reassert any or all causes of action at a later date.

Motion to Voluntarily Dismiss Pursuant to Rule 41(a)(2)

A. Legal Standard

"Although voluntary dismissal without prejudice is not a matter of right, the presumption in this circuit is that a court should grant dismissal pursuant to Rule 41(a)(2) absent a showing that defendants will suffer substantial prejudice as a result." *Gap, Inc. v. Stone Int'l Trading, Inc.*, 169 F.R.D. 584, 588 (S.D.N.Y. 1997) (internal citations omitted); see also *Benitez v. Hitachi Metals Am., Ltd.*, No. 11 Civ. 6816, 2012 WL 3249417, at *1 (S.D.N.Y. Aug. 6, 2012) ("[T]here is a general presumption that motions to dismiss claims without prejudice should be granted."). The Second Circuit has identified five factors relevant to considering whether a motion for voluntary dismissal without prejudice should be granted:

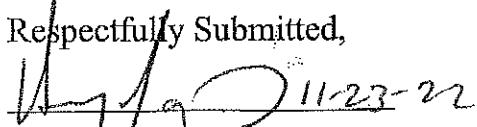
(1) [T]he plaintiff's diligence in bringing the motion, (2) any undue vexatiousness on the plaintiff's part, (3) the extent to which the suit has progressed, including the defendant's efforts and expense in preparation for trial, (4) the duplicative expense of relitigation, and (5) the adequacy of the plaintiff's explanation for the need to dismiss.

"The fact that the plaintiff may obtain some tactical advantage by taking a voluntary dismissal is not sufficient grounds to deny a motion under Rule 41(a)(2)"; *Wright & Miller*, 9 Fed. Prac. & Proc. Civ. at §2364 (noting that "it is not a bar to a court-granted dismissal under Rule 41(a)(2) that the plaintiff may obtain some tactical advantage thereby").

Conclusion:

Here Lopez is not seeking to obtain a tactical advantage and the Government will not suffer any prejudice from dismissal without prejudice. Accordingly, Lopez's motion for voluntary dismissal should be granted.

Respectfully Submitted,

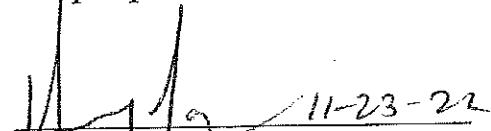


11-23-22

Henry Lopez, pro-se

CERTIFICATE OF SERVICE

I declare under penalty of perjury that the foregoing is true and correct and hereby certify that, on November 23rd, 2022 the foregoing Motion for "VOLUNTARY DISMISSAL OF MOTION WITHOUT PREJUDICE UNDER RULE 41" was served upon the U.S. Attorney for the Southern District of New York via U.S. mail and pre-paid.



11-23-22

Henry Lopez, pro-se

